

1 that put forth the issue, decided that I had met the issue and
2 supported my motion for summary decision. So I'm not quite
3 sure I understand why we need to look back towards the way
4 things were in my unamended application -- in CEA's unamended
5 application at the time the hearing designation order was
6 issued.

7 JUDGE CHACHKIN: I'm not looking at your unamended
8 -- we're looking at Exhibit 2 which you amended and I'm trying
9 to discern since I didn't get it in their response to the
10 motion for summary decision what the basis of their conclusion
11 was. I'm trying to determine now what the basis of this
12 analysis they made in accordance with the Commission's own
13 processing standards whether any of these programs fit the
14 definition of instructional programs, or maybe if they didn't
15 I'd like to know what standards they employed in making
16 this -- in determining on the basis of their "analysis" that
17 the applicant was now qualified.

18 MR. ZAUNER: And I'll tell you -- I told you
19 initially that they looked at the mission of the applicant and
20 then they looked at how the programming that they were -- type
21 of programming that they were planning to carry would help to
22 carry out that mission and that's the way they evaluated this
23 showing.

24 JUDGE CHACHKIN: What does that have to do with what
25 the Commission said place emphasis on instructional --

1 educational --

2 MR. ZAUNER: Well, this is educational programming.

3 JUDGE CHACHKIN: It's not a proposed commercial
4 station, it's a proposed educational station.

5 MR. ZAUNER: It's a noncommercial -- and do you see
6 anything here that is commercial?

7 JUDGE CHACHKIN: Well, looking at this -- at the
8 proposal here, it seems to me one could -- possible that a
9 station which was applying on a commercial channel could
10 propose identical or similar programming as far as I could see
11 to serve the public interest if that's the standard. Maybe
12 there's no difference anymore in the processing view between
13 someone who applies on the reserved educational channel and a
14 commercial channel, I don't know. But I'm trying to find out
15 what criteria if any differentiates the two in the processing
16 -- in the view of those on the processing line who have to
17 make these determinations.

18 MR. ZAUNER: Well, there's no limitation on a
19 commercial frequency. You could come in and put this
20 programming on, obviously. But the question is, could you put
21 on rock-and-roll format and sell advertising time on the
22 noncommercial frequency.

23 JUDGE CHACHKIN: Advertising time you can't sell.

24 MR. ZAUNER: Well, that's why --

25 JUDGE CHACHKIN: That's the only distinction.

1 MR. ZAUNER: This is a nonprofit organization going
2 into noncommercial service and they're proposing what I see as
3 educational programming and that's -- that is in accord with
4 their goals and mission.

5 JUDGE CHACHKIN: Now, when you say educational
6 programming, there's two types of educational programming
7 according to the Commission. One is instructional and one is
8 general educational which the Commission said is an
9 educational programming for which no formal credit is given.
10 Now, you've conceded that your review of Exhibit 2, you can't
11 tell me which of any of these proposed programming qualifies
12 as instructional program under the Commission's definition.

13 MR. ZAUNER: No, that's not correct. I said
14 assuming for the purposes of this argument which one --

15 JUDGE CHACHKIN: Well, you tell me then which one.

16 MR. ZAUNER: Well, we've already told you.

17 Mr. Cinnamon has identified --

18 JUDGE CHACHKIN: Instructional means for credit. Is
19 there any indication here that any of these programs are for
20 credit?

21 MR. ZAUNER: "CEA also plans to develop a radio
22 school with using written material developed with the aid of
23 local educators will offer courses in basic skills such as
24 math, English, reading skills, health and hygiene. CEA plans
25 to offer educational programming in English and Spanish. This

1 | may well receive credit in some institution."

2 | JUDGE CHACHKIN: Well, in order to receive credit
3 | then you have to have some arrangement with some educational
4 | institution if you read -- if you read my memorandum, opinion
5 | and order, the Commission specifically said in Way of the
6 | Cross, in order to constitute instructional programming since
7 | the station is not an educational institution, the applicant,
8 | but only an educational organization, therefore it has to be
9 | providing the programming in collaboration with an educational
10 | institution, i.e., a school.

11 | MR. ZAUNER: Your Honor, with all due respect, I
12 | think we're beginning to go around in a circle. We're
13 | repeating ourselves -- get to the next --

14 | JUDGE CHACHKIN: Fine. General educational -- which
15 | falls under the category of general educational in the
16 | Bureau's view?

17 | MR. ZAUNER: In the Bureau's view that falls into
18 | general education, the educational portion falls into general
19 | education.

20 | JUDGE CHACHKIN: Which?

21 | MR. ZAUNER: If they don't get accreditation with a
22 | local school or they, they don't get --

23 | JUDGE CHACHKIN: I didn't say anything about
24 | accreditation.

25 | MR. ZAUNER: I said if they don't.

1 JUDGE CHACHKIN: But that's not required.

2 MR. ZAUNER: It's not required. I'm saying if they
3 don't then this programming would be general education.

4 JUDGE CHACHKIN: Accreditation has nothing to do
5 with it. The question is they have to have an
6 arrangement --

7 MR. ZAUNER: Well, I'm just trying to --

8 JUDGE CHACHKIN: -- in providing the program with
9 some educational institution.

10 MR. ZAUNER: I'm just trying to distinguish between
11 the instructional and general educational categories. That's
12 all.

13 JUDGE CHACHKIN: All right. Now, what constitutes
14 general educational in the Bureau's view?

15 MR. ZAUNER: Programming which provides educational
16 information to listeners.

17 JUDGE CHACHKIN: What does that mean? Public-
18 affairs program is educational?

19 MR. ZAUNER: If it's instructional, if it
20 provides --

21 JUDGE CHACHKIN: Wait a minute. Instructional?
22 What do you mean by instructional now?

23 MR. ZAUNER: Provides information.

24 JUDGE CHACHKIN: So, any public-affairs program that
25 provides information is educational?

1 MR. ZAUNER: I think you could say that. I wouldn't
2 want to say it wasn't. Would you?

3 JUDGE CHACHKIN: Well, I would say it -- not under
4 my definitions of educational.

5 MR. ZAUNER: A public-affairs program which provides
6 information for let's say on AIDS awareness certainly is
7 educational in my mind.

8 JUDGE CHACHKIN: Well, not in my mind.

9 MR. CINNAMON: What about current affairs, Your
10 Honor, if I --

11 JUDGE CHACHKIN: I wouldn't consider that
12 educational. I would consider that public affairs, news and
13 public affairs. Educational would be looking at my
14 definition, what you're proposing the radio school might fit
15 into general educational.

16 MR. CINNAMON: Until I find a way to offer it as
17 instruction.

18 JUDGE CHACHKIN: But as far as putting on, as far as
19 putting on public-affairs programs on various important issues
20 of the day, I don't know how that constitutes education. Not
21 what the Commission is talking about, a situation where it's
22 something other than what you get credit for but they're still
23 talking about an educational program for which no formal
24 credit is given.

25 MR. CINNAMON: If you start talking about current

1 | affairs and you talk about issues of the day and you
2 | incorporate by background educational information that teaches
3 | people about either geography or health care, about their --
4 | the way disease is spread, whatever it is, isn't it sort of
5 | hard to pigeon hole those kinds of programs?

6 | JUDGE CHACHKIN: Well, if you put on guests who
7 | discuss health, for instance some medical officer or doctor
8 | and he discusses health and how children should get inoculated
9 | or what-have-you, things of that nature, I don't consider that
10 | to be educational.

11 | MR. ZAUNER: Well, I do.

12 | JUDGE CHACHKIN: On that basis then everything under
13 | the sun is educational. I don't know what would not be
14 | educational under that definition. What would not be
15 | educational?

16 | MR. ZAUNER: Rock-and-roll.

17 | JUDGE CHACHKIN: Well, one could argue that's
18 | educational, performance of music to educate people.

19 | MR. ZAUNER: To some extent it is, yes, but this is
20 | -- but what you're talking about, National Public Radio would
21 | be out of business, I mean as educational because what they
22 | have is a lot of talk shows, a lot of interview shows,
23 | vignettes. They don't have classrooms of the air. It isn't
24 | required that applicants for educational frequencies have --
25 | in many schools broadcasting for credit or noncredit,

1 education has a broader definition than that. And I
2 understand your philosophical position, but it's difficult to
3 sometime pigeon hole these things as educational. And yeah, I
4 have to agree with you, to some extent you could say almost
5 anything is educational. I mean, I think you're right.
6 Anything information that comes over the air is by definition
7 information and can be educational. But I think what the
8 Commission is looking at is programming that's designed to
9 meet the needs and problems of the communities that the
10 stations serve and here --

11 JUDGE CHACHKIN: But that's true of a commercial
12 station isn't it?

13 MR. ZAUNER: Yeah, it's -- but for much limited
14 extent, it's not the primary mission of a commercial radio
15 station.

16 JUDGE CHACHKIN: It isn't? To serve the needs and
17 interests of the community?

18 MR. ZAUNER: It's part of what -- well, yes.

19 JUDGE CHACHKIN: I thought that was the primary --

20 MR. ZAUNER: I didn't say that that -- what I meant
21 was that that type of programming is not the primary
22 programming of the commercial stations. But here it is the
23 primary programming of the noncommercial stations and I think
24 that's what distinguishes them. I'm sorry, I misspoke a
25 little bit earlier. And here you have a statement of

1 educational goal and purposes that shows that this applicant
2 is dedicated to putting on a service which educational in
3 nature and in my opinion the narrative statement that they're
4 submitted is sufficient to warrant a favorable determination
5 of the issue.

6 JUDGE CHACHKIN: Well, we'll just have to wait and
7 see when the -- I'd like to see some precedent you'd site me
8 for this, not telling me that the staff takes this position,
9 where the Commission when they established this service or
10 subsequently had discussed what type of programming.

11 MR. ZAUNER: I'll give you the precedent right now.

12 JUDGE CHACHKIN: What is the precedent?

13 MR. CINNAMON: Let me also, let me also offer one
14 other item too. My Exhibit 7 is a certified copy of the
15 application of Palm Bay Public Radio that the Commission
16 passed favorably on which is where all our discussion is
17 starting from.

18 JUDGE CHACHKIN: The Bureau has some precedent they
19 want me to read.

20 MR. ZAUNER: The precedent is what I've already
21 given you and that is that the Form 340 no longer requires the
22 kind of information you seem to be asking for. All it
23 requires is a brief description in narrative form of the
24 planned programming service relating to the issues of public
25 concern facing the proposed service area. In the past, the

1 kind of information that you're asking for was required to be
2 produced. It is no longer, it was dropped. We no longer
3 require the applicants to jump through these kinds of hoops.

4 JUDGE CHACHKIN: Who said anything about jumping
5 through hoops?

6 MR. ZAUNER: This is the precedent. The precedent
7 is that you're that --

8 JUDGE CHACHKIN: No, you told me, you told me, you
9 told me what the Commission requires in their form and the
10 form as you read it says you have to provide some brief
11 showing of programming.

12 MR. ZAUNER: I'll read it again, "A brief
13 description in narrative form."

14 JUDGE CHACHKIN: Yes.

15 MR. ZAUNER: "Of the planned programming service,"
16 not of the programming, "Of the programming service relating
17 to the issues of public concern facing the proposed service
18 area."

19 JUDGE CHACHKIN: So, you're telling me that
20 notwithstanding that the Commission has come out with this
21 processing standard, this should be ignored?

22 MR. ZAUNER: What processing standard do you have in
23 your hand? Can you give me a cite for that?

24 JUDGE CHACHKIN: Well, I'm talking about Way of the
25 Cross where they established after the case that was cited by

1 counsel, Mr. Cinnamon -- do you remember Mr. Cinnamon
2 relied --

3 MR. CINNAMON: I relied on the 1991 Palm Bay case.

4 JUDGE CHACHKIN: No, no, no, no, no, you relied --
5 you mentioned at the last session and in your application you
6 relied on Moody Bible Institute.

7 MR. CINNAMON: For the general proposition, that as
8 long as you tip the scale in favor of educational, public
9 affairs and institutional as opposed to light entertainment
10 your application can go forward.

11 JUDGE CHACHKIN: But the Commission following Moody
12 Bible Institute established processing standards for use in
13 analyzing applicants applying for educational reserved FM
14 channels.

15 MR. CINNAMON: Absolutely.

16 JUDGE CHACHKIN: And the standards that I'm talking
17 about, there seems to be a conflict here between this
18 application form which you read which seems to me the
19 Commission is looking to tell us what -- how you're going to
20 serve the needs of the community generally and the
21 Commission's precise standards -- processing standards which
22 they talk about in Palm Bay Public Radio and they talk about
23 in Way of the Cross and they talk in Lower Key Communications,
24 Inc., and they all refer to the Commission establishing after
25 the Moody Bible case processing standards. And under the

1 processing standard the Commission says we emphasize
2 educational programming when an organizational applicant
3 applies and the things that -- two educational programs that
4 we're emphasizing are those which are instructional and those
5 with general educational. But judging from what the form
6 says, the form makes no reference to any such programming.

7 MR. ZAUNER: That's right.

8 JUDGE CHACHKIN: So apparently someone has not
9 caught up with the Commission here. There seems to be a
10 conflict here.

11 MR. ZAUNER: No, no. When they're talking about
12 programming there, I think, I think again what they're talking
13 about is not a showing on specific programming but, rather, a
14 showing of -- how can I, how can I put this? Of the program
15 policies, of the program -- of the nature of the programming
16 that's going to be produced. They're not looking for the
17 specific programming.

18 JUDGE CHACHKIN: But the point of the matter, the
19 way I read that form there, the way I read the form, it would
20 be impossible to discern whether an applicant is providing
21 instructional or general educational programming. The way I
22 read the form, there's no -- according to what you're telling
23 me, the form does not require you to provide information
24 whereby the Commission could determine whether or not they're
25 providing instructional or general educational -- let me read

1 from the policy standard. "We recognize the fact that
2 noncommercial educational FM stations may present a wide
3 variety of programming including such matters as light
4 entertainment, gospel or popular music and sports.
5 Nevertheless, for the purpose of determining the applicant's
6 qualifications we must place principal emphasis on those
7 programs as defined above which are clearly educational in
8 nature." Now, something is wrong in the state of Denmark here
9 because you keep reading me from the form which doesn't seem
10 to stress at all what the Commission is looking for here and
11 the Commission's processing standard which specifically says
12 what the Commission is looking for here. So I would suggest
13 that you go back to the processing line and tell them to read
14 the Commission's processing standards.

15 MR. ZAUNER: What are you reading from? Can you
16 give me the citation to that, the policy statement that you
17 just read?

18 JUDGE CHACHKIN: What I'm reading from is the
19 Commission's processing standards which can be found in the
20 Federal Register. Notice of Inquiry in Docket 78-164 --

21 MR. ZAUNER: 78--

22 JUDGE CHACHKIN: 78-164, 43 Federal Register 30842
23 which was issued in 1978.

24 MR. CINNAMON: That's long ago, Your Honor.

25 MR. ZAUNER: That's long ago. We're talking about a

1 1983 form being revised.

2 JUDGE CHACHKIN: Which is referred to in Way of the
3 Cross which is a 1985 decision, which is referred to in Palm
4 Bay Public Radio which is a 1991 case -- specifically referred
5 to in the 1991 case. And I'm not aware of anything where the
6 Commission has ever said these -- this standard doesn't apply
7 anymore. So, something is wrong here somewhere. Either the
8 staff is not aware of -- processing standard which the
9 Commission established or I don't understand it. Now, Way of
10 the Cross was a 1985 case which was after -- a 1991 case and
11 Palm Bay Public Radio, Inc. is a 1991 case.

12 MR. CINNAMON: Your Honor, if I might try to, to
13 move the point as it reflects to this case maybe. Do we
14 concede at least that the Commission is out of the policy or
15 requiring weekly program statements that identify whether a
16 particular program is public affairs or whether it's news or
17 whether it's educational? Isn't that subsumed into an every-
18 thing-but-light entertainment category now under the way
19 things are viewed now because making the assessments of what
20 you consider to be general educational, what Mr. Zauner
21 considers to be general educational, what my applicants
22 consider to be general educational --

23 JUDGE CHACHKIN: Are we talking about commercial or
24 are we talking about --

25 MR. CINNAMON: No, we're talking about

1 noncommercial, noncommercial applicants.

2 JUDGE CHACHKIN: Under noncommercial the way I read
3 Palm Bay Public Radio, Inc., Commission specifically says that
4 the emphasis -- if you apply for a noncommercial FM channel
5 the emphasis --

6 MR. CINNAMON: Is on educational programming.

7 JUDGE CHACHKIN: Is on educational program as
8 defined in the standards.

9 MR. CINNAMON: Right, I concede that.

10 JUDGE CHACHKIN: For credit and not for credit.

11 MR. CINNAMON: I concede the word educational
12 programming is the gravamen of a noncommercial educational FM
13 applicant's programming function. You, Mr. Zauner and I have
14 spent a half hour discussing what constitutes an educational
15 program as opposed to a news program and public-affairs
16 program. It is my position that the Commission is out of the
17 business of discerning between whether or not a particular
18 program is a public-affairs, a news, an educational program.
19 I'll leave instructional as a separate category because that's
20 very easy to prove. In fact, the present day application form
21 says if you are affiliated with a university and providing 100
22 percent instructional programming you do not need to provide a
23 narrative of the, of the programming you wish to supply, you
24 can just say I am an institutional programmer which is how
25 colleges and universities go forward. But as for an applicant

1 that proposes a programming like learning about the law, is
2 that educational, public affairs, a little of both, little of
3 neither? How do we access quantitatively where they are?

4 JUDGE CHACHKIN: Well, we're not even at that point
5 -- I'm not even at that point with Mr. Zauner. Mr. Zauner is
6 reading me from a form which doesn't even make any -- even
7 recognize the existence of the Commission's policy standards
8 dealing with education -- what an educational station is
9 required to do.

10 MR. CINNAMON: The instructions to the form are
11 probably more illuminating as to what's required in that
12 narrative. The instruction itself in the form is fairly
13 brief, but there are several pages in the instructions.

14 JUDGE CHACHKIN: I don't know. What do the
15 instructions provide, Mr. Zauner? You've been reading from
16 the form, but what about the instructions?

17 MR. ZAUNER: "Applicants need only file a program
18 statement called for in Section 4 of this application. See
19 Public Broadcasting Stations Programming and Reporting
20 Requirements 98 FCC 2nd 746."

21 JUDGE CHACHKIN: I don't know what that is. 98 FCC
22 2nd, what is it?

23 MR. ZAUNER: 98 FCC 2nd 746.

24 JUDGE CHACHKIN: 98 FCC 2nd 746.

25 MR. ZAUNER: Unless I did something wrong, I looked

1 | for that and --

2 | MR. CINNAMON: And it's not there.

3 | MR. ZAUNER: -- it's not there.

4 | MR. CINNAMON: We both looked for it and it's not
5 | there.

6 | JUDGE CHACHKIN: It's not there?

7 | MR. ZAUNER: It's not -- there is nothing at 98 FCC
8 | 746. I will tell you I read, I read a draft of it, I'm not
9 | sure if it was the final version that someone had. But I went
10 | looking quite strenuously for it and I didn't find it very
11 | illuminating so unless the draft was changed -- was published
12 | somewhere else, I really can't shed more light on it for Your
13 | Honor.

14 | JUDGE CHACHKIN: Well, I don't think we have to
15 | discuss this further. One thing I would expect from the
16 | Bureau though, if the Bureau somehow feels or the staff feels
17 | that the Commission's processing standard which I referred to
18 | as no longer appropriate when the Commission no longer uses
19 | it, then I -- like to tell me that it states so?

20 | MR. ZAUNER: Well, I'm not sure whether it's -- that
21 | it's an either-or proposition. We may take these statements
22 | and look at them and say let's see, is this going to be
23 | general education, does it meet that standard and does it
24 | provide general educational information? If it does, you
25 | know, we accept it.

1 JUDGE CHACHKIN: The way you describe to me,
2 apparently the staff in their analysis didn't make any such
3 analysis of whether it's general educational or instructional
4 or anything of that nature.

5 MR. ZAUNER: Yes, Your Honor, I think there was an
6 analysis made, that's why the issue was added. They felt that
7 the initial showing --

8 JUDGE CHACHKIN: No, no, I'm talking --

9 MR. ZAUNER: -- was not sufficient to meet the
10 standard, they did not show that they were either
11 instructional or general educational and an issue was added.

12 JUDGE CHACHKIN: Well, according to the --

13 MR. ZAUNER: The applicant then came in with an
14 amendment, the staff looked at it and said yes, now we believe
15 that this statement does demonstrate those standards.

16 JUDGE CHACHKIN: Well, let me ask you a simple
17 question. You told me you can't discern which is
18 instructional --

19 MR. ZAUNER: I did not tell you that.

20 JUDGE CHACHKIN: -- which if any constitutes
21 instructional on the basis of this. If the analysis was made
22 presumably you would have the information showing how the
23 staff made the determination and which constitutes general
24 educational and if so how do you define general educational.
25 I'd like to know those things and I hope in your -- when you

1 file your findings you will illuminate me because I would
2 certainly like to be illuminated as to what constitutes
3 general educational according to the staff and what
4 constitutes instructional and whether or not the staff pays
5 any attention or cares about the processing standard which the
6 Commission said you'd place emphasis on on educational
7 programs. But I'd like to know these things because since I
8 didn't get this information when you filed your support of the
9 motion for summary decision and it's my job when I write a
10 decision to have a basis for it, not just to say I'm granting
11 this motion for summary decision because the Bureau said it's
12 all right to do so. I don't believe that I'm performing my
13 function as a judge if that's what I do. In engineering, I'm
14 willing to give the Bureau the benefit of the doubt unless
15 there's some opposition by some other engineer, but when it
16 comes to nonengineering matters I have to be given reasons
17 particularly in the face of the Commission's on policies and
18 processing standards. But there's no sense of us going over
19 this here, I just hope I'll get some illumination.

20 MR. ZAUNER: I hope there is some illumination. I
21 think we have to face the fact that there just may not be much
22 illumination. This is sort of a philosophical type question
23 that you're raising here as to what --

24 JUDGE CHACHKIN: No, I'm not raising -- I'm raising
25 a very concrete proposition here. The Commission has said you

1 place emphasis on instructional and general educational and --

2 MR. CINNAMON: But we can't decide among the three
3 of us what a general educational program is, Your Honor.

4 JUDGE CHACHKIN: Well, according to the way I read
5 the Commission's definition here, they're talking about a
6 program which is similar to an instructional except for the
7 fact that no formal credit is given.

8 MR. CINNAMON: Every school, every school in
9 America teaches social studies as current events and kids get
10 credit for sitting in that class and listening to what Bill
11 Clinton does in the morning and the United Nations does in the
12 afternoon and you just told me that that would not count as a
13 general educational program if you were to be the
14 analyzer.

15 JUDGE CHACHKIN: No, I didn't say that. I said --

16 MR. ZAUNER: Well, I think that's pretty much what
17 you said.

18 JUDGE CHACHKIN: I said I would read radio school
19 where you're going to give courses or you're going to give --
20 on English and Spanish and basic math, be offering basic
21 courses not for credit as constituting general educational.
22 My difficulty is whether programs where you have on somebody
23 from the health field or some other field which just gives
24 some general advice of whatever subject it is, general advice
25 on health that -- or anything else constitutes general

1 educational under the Commission's definition and that's where
2 I want to get illumination on.

3 MR. ZAUNER: Let me just say something if I may
4 about the pleading that the Bureau filed. I think the Bureau
5 filed, as you've indicated, it was a very brief pleading, it
6 did not go into the issues as you seemed to have wished that
7 it might have and as it might have done.

8 JUDGE CHACHKIN: Well, I wanted some reason.

9 MR. ZAUNER: But I think the thinking behind that
10 was that the Bureau which designated the issue had looked at
11 the amendment that had been filed and he determined that the
12 issue was now met and the feeling was that that was sufficient
13 to indicate that there was no need to go any further with
14 this. The Mass Media Bureau is the -- through the Audio
15 Services Chief is the one that designated this issue.

16 JUDGE CHACHKIN: Are you suggesting that this is the
17 normal method which the Bureau operates, that when an issue is
18 put in by the Commission or the Bureau all the Bureau -- and
19 someone files a motion for summary decision, all the Bureau
20 has to say is that we're now satisfied and that's the end of
21 the matter? And this is true about financial or all other
22 types of issues?

23 MR. ZAUNER: I don't know whether it's true --

24 JUDGE CHACHKIN: Character issues?

25 MR. ZAUNER: I'm not going to say true of all

1 | issues, and all I'm saying, that I think that was the
2 | reasoning behind the filing of --

3 | JUDGE CHACHKIN: No, I have a different, I have a
4 | different reason. My reason is that the Bureau didn't have
5 | any reasons, they just looked at it and they sort of reached
6 | some kind of idea this satisfies it. If they had specific
7 | reasons I'm sure they would have delineated it because they do
8 | -- I have never gotten a comment from the Bureau on a motion
9 | for summary decision in all the 15 years I've been a judge
10 | except where the Bureau did not give reasons.

11 | MR. ZAUNER: Well, I'm telling you what I think the
12 | reason was and you have another opinion of what the reason was
13 | and --

14 | JUDGE CHACHKIN: Well, but you'll have a further
15 | opportunity to give me reasons when you write your decision --
16 | when you write your findings and your conclusions.

17 | MR. ZAUNER: I certainly will.

18 | JUDGE CHACHKIN: I'm looking forward to them. In
19 | any event, I think the description of programs illuminates the
20 | CEA's position without getting to the question of whether it's
21 | sufficient or insufficient and I propose to accept Exhibit 6.
22 | It will be received.

23 | (Whereupon, the document referred to as
24 | CEA Exhibit No. 6 was received into
25 | evidence.)

1 MR. CINNAMON: Thank you, Your Honor.

2 MR. ZAUNER: Maybe in the mean time we could find
3 that missing part.

4 JUDGE CHACHKIN: Well, we may not find that but the
5 processing standards certainly are available.

6 MR. CINNAMON: Your Honor, I am now putting before
7 the court reporter and asking her to mark for identification
8 Exhibit No. 7 which is -- the original is a certified copy
9 complete -- FCC. The exhibit runs 11, 12 pages. It is the
10 parts that are relevant from the application of Palm Bay
11 Radio, Inc., a case which we've heard much about today and
12 upon which CEA relied on when it filed its motion for summary
13 decision. I believe admission of this requesting official
14 notice and obtaining admission of the exhibits that Palm Bay
15 Radio used in order to convince the Commission that its
16 application was a grantable noncommercial educational FM
17 application in the reserve bin over a petition to deny its
18 application as being insufficient under 73 Section 503(a)
19 would be illuminating in this case as a measure as to where
20 CEA's exhibits fall by comparison.

21 JUDGE CHACHKIN: The document described will be
22 marked for identification as CEA Exhibit 7.

23 (Whereupon, the document referred to as
24 CEA Exhibit No. 7 was marked for
25 identification.)

1 JUDGE CHACHKIN: Any objections to its receipt for
2 purposes of official notice?

3 MR. ZAUNER: I think for purposes of official notice
4 I would have no objection.

5 JUDGE CHACHKIN: I will not receive it for purposes
6 of official notice. I don't know all the facts concerning
7 this case. Obviously, your proposal is not identical to Palm
8 Bay's proposal. I don't know -- we don't have the people on
9 the processing line who made the determination, the reasons
10 for their determination.

11 MR. CINNAMON: Your Honor -- decision. What
12 happened -- if I might give some background, this was an
13 application that the processing line took a look and actually
14 sent forward and it was subject to a petition to deny from an
15 unsuccessful applicant. Based on the petition to deny, the
16 full Commission reviewed that application and found its
17 presentation satisfactory under 73.503(a). Remarkably,
18 there's only about 10 hours of programming for each week in
19 there and not a shred of educational or general educational or
20 instructional programming in their entire programming exhibit.

21 JUDGE CHACHKIN: I am not going to receive it. You
22 are not proposing identical programming, you're proposing
23 different programming. Your programming will be judged on the
24 determination of whether it satisfies the Commission's policy
25 standards. In fact the Commission in one case found something

1 sufficient is not a basis for determining an entirely
2 different case whether this proposal is sufficient. I will
3 not receive it for official notice.

4 MR. CINNAMON: Am I to understand that what saying
5 is Palm Bay Radio as it stands has no precedential value in
6 this matter?

7 JUDGE CHACHKIN: The only precedential value of Palm
8 Bay Radio is the Commission's decision and --

9 MR. CINNAMON: And the facts upon which it's based
10 have no relevance?

11 JUDGE CHACHKIN: No, the Commission did not -- there
12 is nothing in Palm -- as far as I am concerned, it's not
13 appropriate to bring out some other case which I don't know
14 what the facts are and to say on the basis of that I should
15 get it granted.

16 MR. CINNAMON: I'm not asking --

17 JUDGE CHACHKIN: It's not a decision -- wait a
18 minute, you're not even -- you're basing it -- if you want to
19 rely on Palm Bay Radio you can rely on Palm Bay Radio and cite
20 that as precedent in your conclusions and argue from that that
21 you feel on the basis of Palm Bay Radio you should get a grant
22 but I'm not prepared to take official notice of Palm Bay Radio
23 -- of the application filed on Palm Bay Radio as evidence in
24 this case. It's not evidence in this case. What's evidence
25 in this case is the evidence you are presenting. You can cite